

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando and Autonation, Inc., single and joint employers and International Association of Machinists and Aerospace Workers, AFL-CIO.**  
Cases 12-CA-026126, 12-CA-026233, 12-CA-026306, 12-CA-026354, 12-CA-026386, and 12-CA-026552

December 16, 2014

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND SCHIFFER

On September 28, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 163, and on December 7, 2012, the Board issued an unpublished Order Denying Motion for Reconsideration. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Seventh Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order and the Order Denying Motion for Reconsideration, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S. Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered *de novo* the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order and Order Denying Motion for Reconsideration, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 163, and the Order Denying Motion for Reconsideration, which are incorporated herein by reference. The judge's

recommended Order, as further modified herein, is set forth in full below.<sup>1</sup>

**ORDER**

The National Labor Relations Board orders that the Respondents, Contemporary Cars, Inc. d/b/a Mercedes-Benz of Orlando, Maitland, Florida, its officers, agents, successors, and assigns, and AutoNation, Inc., Fort Lauderdale, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an unlawfully broad rule in their employee handbook prohibiting all solicitation on company property.

(b) Creating the impression that employees' union activities are under surveillance.

(c) Coercively interrogating employees regarding their knowledge of employee union activity, their union activities, and their union sympathies.

(d) Soliciting employee grievances and implying that they will be remedied in order to dissuade employees from supporting the International Association of Machinists and Aerospace Workers, AFL-CIO.

(e) Informing employees that their grievances with regard to team leaders have been adjusted by the demotion of team leaders in order to dissuade them from supporting the Union.

(f) Informing employees that the Respondents will not recognize the Union until there is a contract.

(g) Issuing employees documented coachings because of their protected concerted activities.

---

<sup>1</sup> We shall modify the judge's recommended Order in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall also substitute a new notice to conform to the modified Order and in accordance with our decision in *Durham School Services*, 360 NLRB No. 85 (2014).

Member Johnson finds it unnecessary to pass on whether the Respondents, through Vice President and Assistant General Counsel Brian Davis, and General Manager Bob Berryhill, violated Sec. 8(a)(1) by interrogating employees regarding their union activities. In his view, those findings are cumulative and do not affect the remedy. Further, for the reasons set forth in the judge's decision, Member Johnson would adopt the judge's dismissal of the allegation that the Respondents violated Sec. 8(a)(3) by laying off service technicians Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud in April 2009. Finally, Member Johnson agrees with his colleagues that, under *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), the Respondent unlawfully failed to bargain over the layoffs of the service technicians, among other postelection unilateral changes. He notes that the Respondent does not ask the Board to reconsider this precedent. Accordingly, although Member Johnson expresses no view as to whether *Mike O'Connor Chevrolet* was correctly decided, he agrees to apply it here for institutional reasons.

(h) Discharging employees because of their union activities.

(i) Changing the terms and conditions of employment of its unit employees without first notifying the Union and giving it an opportunity to bargain; specifically,

(i) Laying off service technicians in the bargaining unit represented by the Union without giving notice to and bargaining with the Union regarding the decision to lay off and the effects of that decision.

(ii) Unilaterally suspending skill level reviews, thereby denying promotions to employees who would have been promoted if those reviews had occurred.

(iii) Unilaterally reducing the specified hours for performing prepaid maintenance work.

(j) Refusing to bargain collectively with the Union by failing and refusing to provide the Union with requested relevant information.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawfully broad rule in their employee handbook prohibiting all solicitation on company property.

(b) Notify all employees who received the employee handbook that existed in July 2008 that the no-solicitation rule has been rescinded and will no longer be enforced.

(c) Remove from their files any reference to the documented coaching issued to Dean Catalano on October 13, 2009, and notify him in writing that this has been done and that the coaching will not be used against him in any way.

(d) Within 14 days from the date of this Order, offer Anthony Roberts full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(e) Make Anthony Roberts whole for any loss of earnings and other benefits suffered as a result of his discharge, in the manner set forth in the remedy section of the judge's decision.

(f) Within 14 days from the date of this Order, remove from their files any reference to the discharge of Anthony Roberts, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

(g) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union

as the exclusive collective-bargaining representative of employees in the following bargaining unit:

All full-time and regular part-time Mercedes-Benz service technicians employed by Respondent MBO at its facility at 810 North Orlando Avenue, Maitland, Florida, excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(h) Rescind the changes in the terms and conditions of employment for its unit employees that were unilaterally implemented in 2009 as set forth in paragraphs (i) through (l) below.

(i) Within 14 days from the date of this Order, offer Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(j) Make Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud whole for any loss of earnings and other benefits suffered as a result of their discharges, in the manner set forth in the remedy section of the judge's decision.

(k) Make whole all employees who would have been promoted for any loss of earnings suffered as a result of the suspension of skill level reviews.

(l) Restore the former hours specified for prepaid maintenance work and make whole all employees for any loss of earnings caused by the unilateral reduction in specified hours.

(m) Compensate Anthony Roberts, Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud, and those employees who suffered a loss of earnings due to the Respondent's suspension of skill level reviews and reduction in hours for prepaid maintenance work, for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each employee.

(n) Provide the Union with the requested relevant information regarding unit employees as set out in its letter of April 17, 2009.

(o) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to determine the amount of backpay due under the terms of this Order.

(p) Within 14 days after service by the Region, post at their facility in Maitland, Florida copies of the attached notice marked "Appendix A" and within that same time period post at all of AutoNation's other facilities, nationwide, copies of the attached notice marked "Appendix B."<sup>2</sup> Copies of the notices, on forms provided by the Regional Director for Region 12, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, copies of the notices to all current employees and former employees employed by the Respondents at any time since July 25, 2008.

(q) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. December 16, 2014

Mark Gaston Pearce,	Chairman
Harry I. Johnson, III,	Member
Nancy Schiffer,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT maintain an unlawfully broad rule in our employee handbook that prohibits all solicitation on company property.

WE WILL NOT create the impression that your union activities are under surveillance.

WE WILL NOT coercively interrogate you regarding your knowledge of employee union activity, your union activities, and your union sympathies.

WE WILL NOT solicit your grievances and imply that they will be remedied in order to dissuade you from supporting the International Association of Machinists and Aerospace Workers, AFL-CIO, and WE WILL NOT adjust your grievances in order to dissuade you from supporting the Union.

WE WILL NOT tell you that we will not recognize the Union until there is a contract.

WE WILL NOT issue you a documented coaching because of your protected concerted activities.

WE WILL NOT discharge you because of your union activities.

WE WILL NOT change your terms and conditions of employment without first notifying the Union and giving it an opportunity to bargain. Specifically, WE WILL NOT

(1) Lay off service technicians in the bargaining unit represented by the Union without giving notice to and bargaining with the Union regarding the decision to lay off and the effects of that decision.

(2) Unilaterally suspend skill level reviews, thereby denying promotions to employees who would have been promoted if those reviews had occurred.

(3) Unilaterally reduce the specified hours for performing prepaid maintenance work.

## DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawfully broad rule in our employee handbook prohibiting all solicitation on company property and WE WILL notify all employees who received the handbook that existed in July 2008 that this rule has been rescinded and will no longer be enforced.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the documented coaching issued to Dean Catalano on October 13, 2009, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the coaching will not be used against him in any way.

WE WILL, within 14 days from the date of the Board's Order, offer Anthony Roberts full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Anthony Roberts whole for any loss of earnings and other benefits suffered as a result of his discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the discharge of Anthony Roberts, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

All full-time and regular part-time Mercedes-Benz service technicians employed by MBO at our facility at 810 North Orlando Avenue, Maitland, Florida, excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL rescind the changes in the terms and conditions of employment for our unit employees that were unilaterally implemented in 2009, as set forth below.

WE WILL, within 14 days from the date of the Board's Order, offer Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud full reinstatement to their former jobs or, if those jobs no longer exist, to substantially

equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud whole for any loss of earnings and other benefits suffered as a result of their discharges, with interest.

WE WILL make whole all of you who would have been promoted for any loss of earnings suffered as a result of the unilateral suspension of skill level reviews.

WE WILL restore the former hours specified for prepaid maintenance work and make all of you whole for any loss of earnings caused by the unilateral reduction in specified hours.

WE WILL compensate Anthony Roberts, Juan Cazorla, Larry Puzon, David Poppo, and Tumeshwar Persaud, and all of you who suffered a loss of earnings due to our suspension of skill level reviews and our reduction in hours for prepaid maintenance work, for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file a report with the Social Security Administration allocating the backpay awards to the appropriate calendar quarters for each affected employee.

WE WILL furnish to the Union in a timely manner the information requested by the Union in its letter of April 17, 2009.

CONTEMPORARY CARS, INC. D/B/A  
MERCEDES-BENZ OF ORLANDO AND  
AUTONATION, INC., A SINGLE  
EMPLOYER

The Board's decision can be found at [www.nlrb.gov/case/12-CA-26126](http://www.nlrb.gov/case/12-CA-26126) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

## APPENDIX B

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an unlawfully broad rule in our employee handbook that prohibits all solicitation on company property.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the unlawfully broad rule in our employee handbook prohibiting all solicitation on company property and WE WILL notify all employees who received the handbook that existed in July 2008 that this rule has been rescinded and will no longer be enforced.

AUTONATION, INC.

The Board's decision can be found at [www.nlrb.gov/case/12-CA-026126](http://www.nlrb.gov/case/12-CA-026126) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

